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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,083	10/31/2003	Wesley Scott Ashton	ASHTON0009	9725
7590	03/23/2005		EXAMINER	
Wesley Scott Ashton 8549 Black Foot Court Lorton, VA 22079			RODRIGUEZ, RUTH C	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/697,083	ASHTON, WESLEY SCOTT	
	Examiner Ruth C Rodriguez	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 21-30 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 21-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08/05/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Priority***

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 05 August 2004 has been considered for this Office Action.

### ***Claim Objections***

3. Claims 25-27 are objected to because of the following informalities: Claim 21 recites that "the substance is selected from the group consisting of a breath freshener and a flavoring agent" but claim claims 25-27 include an additional substance in the form of a medicine. The term "consisting" in claim 21 should be changed to -- comprising-- or a medication should be included in the group of the substance. For purpose of examination, a medication will also be added to the group. Correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:  
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 21, 22, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Katz (US 6,326,022). A method of dispensing a substance into a mouth wherein the substance is selected from a group consisting of a breath freshener, a medication and a flavoring agent (C. 3, L. 58-66). The method comprises the steps of: (a) providing a mouth and tongue stud including a means for dispensing a substance formed in a portion of the stud (C. 3, L. 58-61). The means of dispensing a substance contains the substance (C. 3, L. 58-66); (b) mounting the stud in a part of a wearer's mouth (Figs. 1-22); and (c) dispensing the substance into the wearer's mouth (C. 3, L. 66 and 67 and C. 4, L. 1).

The substance comprises a breath freshener (C. 3, L. 63-66).

The substance is disposed into the wearer's mouth by dissolving the substance over time in the wearer's saliva (C. 3, L. 66 and 67 and C. 4, L. 1).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
7. Claims 23-27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katz.Katz discloses a method for dispensing a substance into a mouth that has all the steps disclosed in paragraph 4 for the rejection of claims 21 and 22. Katz also discloses the substance can be a medicine. However, Katz fails to disclose the substance can comprises a flavoring agent or a flavoring agent mixed with the breath freshener or a medicine mixed with a breath freshener or the medicine mixed with a flavoring agent or medicine mixed with a breath freshener and a flavoring agent. However, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention that the substance could comprise a flavoring agent or a flavoring agent mixed with the breath freshener or a medicine mixed with a breath freshener or the medicine mixed with a flavoring agent or medicine mixed with a breath freshener and a flavoring agent since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Especially, since the use of medication with flavoring agents and/or breath freshener is well known in the art in order to provide a pleasant flavor since the substance is being used in the mouth.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Warren, Jr. (US 3,754,332), Lariccia et al. (US 3,943,928), Cournut et al. (US 4,020,558), Harris et al. (US 4,551,329), Garay et al. (US 4,861,268), Stanley et al. (US 5,855,908), Denny et al. (US 6,047,209), Katz (US 6,326,022 B1) and Levy et al. (US 6,592,860) are cited to show state of the art with respect to devices used to deliver a medication or other substance into a wearer's mouth.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase the patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as PTO's mailroom

processing and delivery time. For a complete list of correspondence **not** permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee that the applicant is paying by check **should not** be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 872-9306) on (Date).  

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(Typed or printed name of person signing this certificate)  

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(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response has been transmitted by facsimile will cause further unnecessary delays in the processing of your application, duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Ruth C. Rodriguez*  
Ruth C. Rodriguez  
Patent Examiner  
Art Unit 3677

rcr  
March 21, 2005